

The WTO in Nairobi: the demise of the Doha Development Agenda and the future of the multilateral trading system

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The WTO in Nairobi

The demise of the Doha Development Agenda and the future of the multilateral trading system

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Abstract

This article offers a full-length evaluation of the World Trade Organization's (WTO) decisive December 2015 Nairobi ministerial conference. It examines the dynamics of the meeting, the emergence of a new negotiating mode, and the contestations between key developing and developed members; it explores the substance of the deal negotiated; and it reflects on the future capacity of the WTO to serve as a means of securing trade gains for developing and least developed countries. Three arguments are advanced. First, the use of a new mode of negotiating brought participation and consensus into the core of the Nairobi talks, but it also resulted in an agreement that moves away from the pursuit of universal agreements to one wherein more narrowly focused piecemeal deals can be brokered. Second, the package of trade measures agreed continues an established pattern of asymmetrical trade deals that favour developed members over their developing and least developed counterparts. Third, Nairobi alters fundamentally the likely shape of future WTO deals with significant consequences for developing country trade gains. The likely result is that while Nairobi will energise the multilateral system it will do so in a way that is of questionable value to developing and least developed countries.

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*Rorden Wilkinson, Erin Hannah and James Scott**

In mid-December 2015, World Trade Organization (WTO) members gathered in Nairobi, Kenya for the organisation's 10th ministerial conference (MC10—see table 1). Their aim was to resolve a stalemate that had emerged over the purpose and focus of the WTO's negotiating function and the continued viability of the Doha Development Agenda (DDA, or more commonly Doha round). With the help of two through-the-night negotiations MC10 saw members reach an agreement that marks the beginning of a new phase in the evolution of the multilateral trading system, the role developing countries will play therein, and the likely gains that will accrue as a result.

Table 1—WTO Ministerial Conferences

Nairobi (MC10) 15-18 December 2015
Bali (MC9) 3-6 December 2013
Geneva (MC8) 15-17 December 2011
Geneva (MC7) 30 November - 2 December 2009
Hong Kong (MC6) 13-18 December 2005
Cancún (MC5) 10-14 September 2003
Doha (MC4) 9-13 November 2001
Seattle (MC3) 30 November – 3 December 1999
Geneva (MC2) 18-20 May 1998
Singapore (MC1) 9-13 December 1996

Three aspects mark Nairobi out among WTO ministerial conferences. First, the agreement reached transforms fundamentally the framework for conducting trade negotiations for the first time in the WTO's history moving it away from one targeted at broad-based universal deals via a “single undertaking” to something more lithe and multi-faceted (commonly understood as “variable geometry”). This transformation is widely seen as rekindling faith in the organisation's negotiating function and an

important counter to the growing prominence of “mega regional” trade deals such as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). However, reinvigorating the WTO’s negotiating function came at the expense of the DDA and a 14-year effort to agree to a wide-ranging multilateral deal on trade measures for development that has been a key demand of developing countries and which has been crucial to securing their participation in the multilateral trading system.

Second, Nairobi saw members utilise a new mode of negotiation. This new mode builds consensus through a complex multi-layered series of bilateral processes in behind-the-scenes meetings targeting the least contentious issues first, thereby generating willingness and capital before moving on to thornier topics. Dubbed “critical mass” because of the broad-based participatory and consultative approaches that are key components, this method targets blockages in negotiations by encouraging counter-proposals and dialogue with opponents. It was universally praised at the meeting and was seen as crucial in helping bridge the significant pre-ministerial gaps that had existed between members as well as to the conclusion of an agreement. Elements of this approach have been used before, and older more familiar small group and power-political methods were deployed in the closing stages of MC10. Nonetheless, Nairobi witnessed the first time critical mass had been used as a wide-ranging mode of negotiation.

Third, the package of trade measures agreed in Nairobi is not inconsiderable, comprising agreements in agriculture and on least-developed country (LDC) issues as well as an expansion in the 1996 Information Technology Agreement (ITA). What is clear, however, is that in keeping with all previous multilateral trade deals—across the life span of the multilateral trading system and not just the WTO—the balance of these measures clearly favours developed countries.

In combination, these three outcomes mark the beginning of a critical juncture likely to signal a new phase in the evolution of the multilateral trading system. Our purposes in this article are: (i) to evaluate the significance of the Nairobi conference for the future

of the WTO with a particular concern for the organisation's continued capacity to serve as a means of securing trade gains for developing and least developed countries; (ii) to examine the dynamics of the meeting both in terms of the emergence of a new negotiating mode that underpinned the conference's success and the contestations between key developing and developed member states; and (iii) to explore the substance of the deal that was negotiated and to locate this within debate about the future of the multilateral trading system and of global development more generally.

We advance three arguments. First, the Nairobi outcome alters fundamentally the likely shape of future WTO deals with significant consequences for developing country trade gains. Second, while the use of a critical mass negotiating mode brought participation and consensus into the core of the Nairobi talks, ironically it resulted in an agreement that enables members to move away from the pursuit of universal agreements wherein a balance of concessions is required that are acceptable to all members to one in which more narrowly focused piecemeal deals can be brokered. This approach to negotiating has a long-standing history in multilateral trade and its return signals a move back to a more "mini-lateral" exclusionary mode of agreeing trade deals that has traditionally favoured developed countries over their developing counterparts (Wilkinson, 2006a). Third, the balance of the Nairobi package preserves a longstanding feature of General Agreement on Tariffs and Trade (GATT)/WTO negotiations which has consistently seen deals struck that favour the organisation's developed members. Moreover, the transformation of the WTO's negotiating function into a much lighter machinery is likely to preserve rather than attenuate this pattern. This does not necessarily mean that gains for the poorest and least able developing countries will be absent from future negotiations; but it does mean that they will almost certainly be of proportionately lesser value.

In pursuit of our aims, we begin in the next section by exploring the background to the conference so that we are able to locate Nairobi in the context in which it took place and explain why it unfolded in the way that it did. In the section thereafter we move to explore the dynamics of MC10 focusing on the areas of tension and agreement that emerged before examining the application of a critical mass mode of negotiation. We

then examine the substance of what was agreed in Nairobi and consider its value for world trade. In the penultimate section we set the debate, dynamics and outcome of MC10 within the context of the future of the WTO and the multilateral trading system. In the final section we offer our concluding comments.

The run-up to MC10

The run-up to the Nairobi ministerial conference did not suggest that a successful conclusion would necessarily be forthcoming. While positive signals ahead of the meeting indicated that members would at least try and craft an agreement, a number of negative factors were also evident. We discuss these factors in turn.

Auguring well for a successful conclusion, the Nairobi meeting sought to build upon a successful Bali ministerial conference (MC9) which had broken with past practice and produced the first multilateral trade deal since the WTO was created in 1995 (Wilkinson, Hannah and Scott, 2014). MC10 marked the first time that a WTO ministerial conference had been held in Africa. “African” issues were at the forefront of the agenda with strong support being shown for the conclusion of a developing country-led ministerial conference comprising a package of trade measures on agriculture and for LDCs. Two new members (Liberia and Afghanistan) were due to be formally welcomed into the organisation’s ranks with a third—Somalia—submitting notification during the meeting of its intention to join. And, more widely, Nairobi sought to capitalise on a newfound momentum evident in global summitry building on deals agreed in Addis Ababa on financing for development (July 2015), in New York on the Sustainable Development Goals (SDGs—September 2015), and in Paris on climate change (December 2015).

Yet, despite a preparatory process that had seen much activity in key areas, the Geneva-based pre-ministerial process had become “stuck” on several key issues. Expectations among WTO staffers in the run-up to Nairobi had been lowered as a result.¹ Writing ahead of MC10 Michael Froman, the United States Trade Representative (USTR), appeared to many to be calling time on the DDA. As Froman put it, the Doha round was “designed in a different era, for a different era, and much has changed since”. We

should now free “ourselves from the strictures of Doha ... One way or the other, this week’s WTO ministerial conference in Nairobi will mark the end of an era” and “what cannot be achieved in Nairobi will not be achieved by trying again with the same failed approach” (Froman, 2015).

Inevitably, Froman’s comments drew strong criticism. *Financial Times* world trade editor Shawn Donnan (2015) suggested that the USTR’s comments looked to be setting “the stage for an acrimonious showdown”. Jomo Kwame Sundaram (2015) accused Froman of favouring “plurilateralism, bilateralism and an à la carte multilateralism consisting of what developed countries deem to be in developing countries’ interest, while ignoring the latter’s own aspirations”. Sophia Murphy (2015) pleaded with the USA not to forsake multilateralism for a “19th-century echo of big powers trying to control international markets for themselves”.

The tenor of practitioner debate in the run-up to the negotiations was no better. Indonesian Minister of Trade Thomas Lembong (2015), also speaking on behalf of the Group of 33 (G33) developing countries, openly complained about the “tone of negotiations” immediately prior to the opening ceremony. A press release accompanying a statement by UN Special Rapporteurs for Human Rights (OHCHR, 2015a) warned that WTO members should “not weasel out of prior commitments to address the needs of developing economies” and argued in the statement proper that “[t]here is no justification for defaulting on the Doha Round commitments ... such action may have a detrimental impact on human rights” (OHCHR, 2015b). EU Trade Commissioner Cecilia Malmström and Rural Development Commissioner Phil Hogan (2015) criticised the “worrying lack of compromise texts on the negotiating table”. And MC10 conference chair and Kenyan Cabinet Secretary for Foreign Affairs Amina Mohamed (2015) warned that the Nairobi meeting was “the last chance for some time to come for the WTO to dig itself out of its negotiating stasis”. A successful conclusion to the meeting was thus by no means expected.

Dynamics of the meeting and critical mass as a negotiating mode

Unlike the Bali meeting, which was dramatic from the off, MC10 had a more subdued character. Despite the WTO Secretariat reporting healthy NGO registrations and attendance rates, the tented NGO centre was largely empty and some NGO events were cancelled for lack of an audience. Protests in the conference centre and on the surrounding streets were small, poorly attended, and attracted little attention. Except for the final stages when consecutive drafts of the ministerial declaration and associated documents were being presented and heads of delegation meetings were called at short notice, the Kenyatta International Conference Centre was relatively calm and peaceful. Security was visible on a level that had not been seen since Hong Kong in 2005, though it had a more apparent than effective air and was not put to the test. Even the well attended parallel ICTSD Trade and Development Symposium² saw few controversial deliberations or exchanges.

This appearance of relative calm was, however, the consequence of the employment of a new mode of negotiation rather than an absence of hardnosed negotiation or substantive contention. As member states had arrived in Nairobi without a clear consensus and with an over full work programme comprising 15 different unsettled texts, a multi-layered process of concurrent bilateral meetings was put in place to build consensus on easier-to-reach areas before tackling the thornier issue of the future of the DDA as a negotiating framework. And because this process was conducted *en masse* and behind-closed-doors often away from the conference venue it lent the ministerial a false appearance of calm. Yet, as long serving WTO staffers put it, Nairobi was the busiest and most focused ministerial conference to date.³

This new mode of negotiating was not, however, a wholesale departure from past practice but rather an evolution thereof. Bilateral consultations have always played a significant role during multilateral trade negotiations, but these have tended to be held between leading protagonists (largely the principal suppliers and/or importers of particular goods and always including the US and EU) to the exclusion of smaller developing countries. These bilateral consultations would historically then evolve into larger “green room” sessions involving a greater number of members but which would

remain confined to the leading industrial states, and more recently—in response to the “emergence” of large developing countries as global economic forces—India, China and Brazil. At moments of intransigence, particularly during the final stages of a negotiation, these groups would then break back down to very small groups, almost always involving the US and EU with a range of other members periodically playing a role.

In the preceding Bali ministerial conference, Director General (DG) Azevêdo sought to move away from this model toward one that was more inclusive in which all member states felt they were being consulted. To do this he spent a good deal of MC9 consulting a large number of delegations about their positions and red lines. Inevitably some more elitist small group meetings took place and criticisms were levelled at the DG for what some members believed to be final texts that reflected his attempt to find agreement at all costs. Nonetheless, Azevêdo’s efforts were widely applauded.

Several factors made a noticeable difference to the dynamics of MC10 that combined to produce a new mode of negotiation and which had a significant effect on the outcome in Nairobi. First, the public political theatre acted out by key trade ministers that was a characteristic feature of previous DDA ministerials (particularly, but not exclusively, Cancún, Hong Kong and Bali) was absent from Nairobi. Very few press conferences were held. Those that were convened were limited to courtesy events hosted for local journalists by the host country and the WTO’s own daily briefings. The lack of press conferences was not a sign of few differences among members, or the shallowness of divergence, however; rather it reflected the business-like attitude that permeated the conference, the lack of willingness to use public debate as a negotiating tactic and theatrical event for domestic audiences, and the perceived inclusiveness of the process.

Second, from the outset there was a clear willingness to try and reach a deal. Hosting the ministerial conference in Nairobi contributed to this willingness, particularly among developing country delegations. Indonesian trade minister Lembong’s clear statement that he had no “red lines” at the conference’s opening was also important in

this regard, not only because of the clear can-do message it sent but also because his statement omitted any reference to the contentious issues around which the G33 coalesce, namely the Special Safeguard Mechanism (SSM) and public stockholding.

Third, it was clear ahead of Nairobi that the status of the DDA was both contested and unsettled. Yet, rather than being the focus of debate from the outset, negotiating commenced on issues where agreement had already been, or was almost established before moving onto thornier issues. This approach—which built a critical mass of agreement as the conference proceeded—continued to hold sway for the duration of the ministerial, even to the extent that scheduled debate on the status of the DDA allocated for the afternoon of 18 December (after the conclusion of MC10 had been pushed back) was held over until at least some tentative resolution of outstanding issues had been reached. Indeed, it was not until the very last stages of the ministerial conference when members were trying to finalise the thorniest of issues that a move back to more traditional small group style negotiating was evident involving the key protagonists (notably bringing the Group of 5—USA, EU, China, Brazil and India—together to resolve outstanding differences in agriculture). The benefits of this critical mass approach were that it built consensus and trust among member delegations in areas where agreement could be reached while at the same time buying them into the idea that a Nairobi package could be agreed, thereby enabling them to be relatively sanguine about the final stage small group meetings. A key aspect of this process was the active encouragement given to members by conference chair Mohamed and DG Azevêdo to take the initiative to talk with one another and explore solutions rather than to wait to be asked, react negatively during moments of disagreement, and talk exclusively through the Chair.

Fourth, the grand and multiple coalitions evident during the earlier stages of the Doha negotiations—and which had evolved from the late GATT period—did not have the same salience or traction that they had in previous ministerial conferences. This is not to say that coalitions have disappeared (both the G33 and the Cairns group of agricultural exporting countries were active in Nairobi for instance), but their cohesion has been eroded by changes in the global economy and—on the part of lesser-developed,

smaller, and more vulnerable members—a growing acceptance that it no longer makes sense to treat developing countries as one large group. The growing acceptance of the need for greater sensitivity to the specific needs of individual members has rubbed against not only the idea that all developing countries should be treated the same way, it has also undermined the salience of grand coalitions like the Group of 90 (G90) developing and least developed countries. It is also why smaller coalitions like the least developed country (LDC) group are able to retain greater coherence. While it is the case that the G90 did have a presence in Nairobi, it was small. Moreover, the smaller developing countries expressed a growing reluctance to line-up behind India and the other larger developing countries in opposing aspects of the negotiations.

Fifth, the character of WTO ministerial conferences as important high level events has been firmly re-established after they were previously and consciously re-engineered as perfunctory gatherings as a tactic by former WTO DG Pascal Lamy to take some of the heat out of the Doha round following the 2008 collapse in the negotiations (Scott and Wilkinson, 2010). The successful outcome of MC9 began this rehabilitation process. Nairobi cemented it.

Sixth, a clear move to use social media was also evident. During the conference a number of the draft texts were made available online immediately or shortly after they were released. This was accompanied by a conscious call for civil society groups to analyse these texts to help with the process of consideration and the movement forward of the negotiations. The Twitter accounts of many heads of delegation were used to record the number of bilateral meetings in which they had been involved in something close to real time. This illustrated the degree of seriousness with which delegations from all countries were treated—rather than just the select few that would have been invited into green room discussion in previous years—as well as the extent of the industry taking place. In some instances, the Twitter posts were little more than vanity exercises and were often accompanied by pictures of heads of delegation meeting or embracing. In others, they provided a window into the broad-based consultative aspects of the critical mass approach. This was particularly important in regard to the Twitter feed of Amina Mohamed, MC10's chair, in its illustration of the number and

variety of meetings in which she was engaged. The downside, however, was the noticeable damning of certain country positions on Twitter as the negotiations moved towards a conclusion, exemplified by the emergence of two hash-tags #Indiablockstalks and #USblockstalks.

Seventh, although at the Bali Ministerial conference the Chair of the negotiations, Indonesian trade minister Gita Wirjawan, played a considerable role, much of the success of MC9 was attributed to the number and extent of the bilateral consultations that WTO DG Roberto Azevêdo convened. In Nairobi, while Azevêdo continued to play a major role—not least in shepherding the ITA across the line—it was Amina Mohamed that led on the bilateral consultations. In so doing, she was able to draw upon the widespread credibility invested in her role and the relative distance she enjoyed from the secretariat—albeit at the sacrifice of large amounts of sleep during conference.

Eighth, a conscious effort—both rhetorically and substantively—was made to move beyond the North/South divide that had historically bifurcated trade negotiations. Amina Mohamed went to great lengths to stress this during her 18 December press conference, and a large number of delegates and observers corroborated this in private conversations.

The move to a critical mass approach did not mean, however, that the practices of the past were entirely absent or that the negotiations were unproblematic. Capital to capital phone calls designed to push through agreement were much in evidence on the 18 December including from British Prime Minister David Cameron to India Prime Minister Narendra Modi. Agenda stacking was also evident with key players tabling texts on new issues or contentious areas late in the day in the knowledge that these would be withdrawn as part of a bargain for movement elsewhere. This was the case, for example, with the introduction of language in the fisheries text by India referring to the 2005 Hong Kong decision in the knowledge that this would not pass muster with the USA; Brazil's introduction of a text dated 17 December but circulated on the morning of 18 December on regional trade agreements (WTO, 2015e); and with the

raising of suggestions that some now established members—including China and more recent acceded states such as Russia, Saudi Arabia, Taiwan, and Oman—should be permitted to accept no or lower commitments because of the disciplines they adopted as part of their accession processes (*Bridges, 2015b*). Moreover, when the talks overran the planned endpoint of midday 18 December and entered the crunch stage, the mode of negotiation did revert to the more traditional exclusive, small group approach. This irritated other members who felt they should be included and also precipitated the small presence of protesting NGOs to highlight the reversion back to a more undemocratic and exclusionary methods.

The substantive package

Much of the substance of the negotiations that takes place at ministerial conferences focuses on the content of texts. The debates that ensue can often seem to be petty point scoring exercises, but for member states formulations of words play a key role in their political interactions. Often first draft formulations comprise strong statements of position that are designed to make a point but which are inevitably watered down as members move towards a consensus. This movement toward more “vanilla” positions was evident across all of the issues where agreement was reached in Nairobi. We discuss the substance and consequence of this textual jousting below.

The Information Technology Agreement

The most substantive agreement reached in Nairobi—the ITA—also happened to be the first tariff reduction deal achieved in a WTO negotiation. This is a plurilateral agreement signed by 53 members to eliminate tariffs in 201 sector-identified products. Collectively the signatories account for approximately 90 per cent of global trade in the products covered. The WTO calculates that there is US\$1.3 trillion of trade per year in those products, amounting to 10 per cent of total global trade (WTO, 2015g). In theory, all other members benefit even if they are not party to the agreement. This is because the tariff cuts are also “multilateralised”, thus granting tariff free access to the markets of all WTO members. However, this has to be placed within the context of the fact that almost all non-signatories do not produce the products covered by the ITA and are therefore being granted trade concessions in areas in which they have no

capacity to export. The ITA is undoubtedly economically significant, but any claim that it will benefit those developing countries that are not sector producers and/or exporters must be treated with caution.

Agriculture

Agriculture has often been the central focus of WTO ministerial conferences. The preceding Uruguay round (1986-1994) was concluded with an acknowledgement that its Agreement on Agriculture (AoA) had not achieved a sufficient outcome. To overcome this problem the agreement included a “built-in agenda” mandating new negotiations to begin by 1999 aimed at “continuing the process of substantial progressive reductions in support and protection” (AoA, Article 20). As the developing world woke up to the inequalities of the Uruguay round and the problems of how it was being implemented by developed countries (Akram, 2001), the weakness of the AoA became more pronounced. While the precise details have changed over time, ministerial conferences became moments wherein entrenched divisions are expressed between (mostly) developed countries wishing to protect their agricultural sectors and domestic support programmes, and those (mostly developing) countries wanting to see reductions therein and rebalance the AoA. MC10 was no different.

Without the prospect of significant forward movement on a comprehensive deal on market access and domestic support, the focus in Nairobi was on three elements of agricultural trade: export subsidies; the SSM; and public stockholding. Within the context of trying to secure a development-focused outcome from the ministerial, there was hope that some agreement could be formed on these areas of particular interest to developing countries. We outline each below.

Nairobi offered an opportunity to lock in US and EU reductions in the use of export subsidies. Reform of agricultural support programmes coupled with historically high food prices seen after the 2008 financial crisis led both the USA and EU to all but eliminate their use of export subsidies (WTO, 2014). As WTO members looked to deliver a development-focused outcome in Nairobi, an opportunity was sensed for securing an agreement that locked this into place. While this had relatively broad

support, there was a feeling among some members (including the EU) that an agreement in this area needed to tackle not just direct export subsidies but also other programmes that have a similar effect—notably food aid and export credit guarantees. This broader collection became known as “export competition”. On 16 November 2015 the EU and Brazil, joined by Argentina, New Zealand, Paraguay, Peru, Uruguay and Moldova, proposed a draft text on export competition (WTO, 2015a). Heading to Nairobi, the USA—which makes significant use of the indirect supports included under export competition—opposed this move but they were far from alone in doing so. As is increasingly the case within the WTO the issue did not divide along North/South lines. A number of developing countries have recently started to use export subsidies in breach of their WTO commitments—among them India (sugar), Thailand (rice) and China (cotton)—and did not appreciate the sudden focus on export competition.

The second pillar of agriculture—the SSM—was pushed most strongly by India and the G33. The SSM has been presented by its proponents as a measure to correct existing “safeguard” provisions that allow increased protection when faced with a sudden, disruptive increase in imports and which are available only to those countries that have already converted non-tariff barriers into tariffs—a process few developing countries have undertaken. The 2005 Hong Kong Ministerial Declaration accepted that developing countries should have recourse to a similar mechanism that was termed the “Special Safeguard Mechanism” (Wilkinson, 2006b). Over subsequent years a number of proposals were put forward but common ground proved hard to find with the SSM playing a key role in the 2008 collapse of the DDA (Wolfe, 2009).

In the run-up to Nairobi the G33 put forward a new proposal on the SSM but it had little effect. Chair of the Agriculture Committee, Vangelis Vitalis, noted ahead of MC10 that many members had “expressed strong opposition to the idea of an outcome on SSM at MC10 in the absence of a broader outcome on agriculture market access” and concluded that the negotiations “had reached an impasse” (WTO, 2015b: 2). Nonetheless, the G33 continued to consider the SSM to be “a balancing element in relation to other potential outcomes for Nairobi” (WTO, 2015b: 2).

The third pillar of agriculture discussed was public stockholding. As with the SSM and export competition, the issue made little progress in Geneva and was sent to Nairobi for consideration by ministers. This issue had formed the most controversial element of the 2013 Bali package, as some developing countries led by India pushed for an amendment to the AoA that would facilitate programmes of purchasing food for distribution to the poor at highly subsidised rates. Bali ended with a temporary agreement and a stipulation that work would be done to find a more permanent solution. Heading to Nairobi, the G33 pushed for agreement on that more permanent solution, while others continued to see this as impossible in the absence of a more complete DDA package.

By the emergence of the first draft agriculture text (WTO, 2015c) on the 17 December it had become clear that India's demand for an outcome on the SSM was not going to be delivered. The final decision on the SSM dealt with the issue in three lines, stating that "developing country Members will have the right to have recourse to a special safeguard mechanism (SSM) as envisaged under paragraph 7 of the Hong Kong Ministerial Declaration", and that negotiations would continue to that effect in the Committee on Agriculture Special Session (WTO, 2015e). Public stockholding was dealt with in a similar fashion, consisting merely of a reaffirmation that the Bali decision would remain in force until a permanent solution was agreed, that negotiations toward that end would continue "in an accelerated time-frame", and that the General Council would regularly review progress (WTO, 2015f).

Progress was greatest on the export competition pillar, albeit it limited largely to export subsidies. A timetable was set for the elimination of export subsidies—by 2020 for developed and 2023 for developing countries—with an accelerated timescale in cotton. On the broader areas of export competition the language was primarily of a best endeavour nature. Providing food aid in-kind was allowed to continue, though the agreement encouraged members to provide such aid in cash. Several paragraphs were devoted to trying to control the monetisation of food aid,⁴ requiring a "demonstrable need for monetisation" and an analysis of local or regional markets to minimise disruption. However, given the lack of clarity around such conditions it is questionable

how effective they will be. Oxfam America's Gawain Kripke commented, "[t]he proposal does not move away from tied food aid programs and would not exert any pressure to reform the status quo" (Bridges, 2015a).

Overall, the package on agriculture made an important step forward in banning export subsidies. This element was lauded by DG Azevêdo in the closing ceremony as being "truly historic" and "the WTO's most significant decision on agriculture", completing a task that "had been outstanding since export subsidies were banned for manufactured goods 50 years ago" (Azevêdo, 2015). The large-scale use of export subsidies has historically had a detrimental impact on domestic markets in developing countries and harmed their long-term food security by undermining domestic production and eliminating damaging policies is certainly welcomed. Beyond this, however, the outcome in Nairobi had little substance. The policy changes demanded by many food importing developing countries relating to protecting their food security—namely the SSM and public stockholding—continue to be parked on a work programme (the DDA) that now looks unlikely to be concluded.

LDC issues

In advance of Nairobi, the LDC group had identified four main priority areas—the LDC services waiver; preferential rules of origin; cotton; and duty-free, quota-free market access (DFQF) (WTO, 2015d). Each of these items were included as key elements of the 2013 Bali LDC package but only as a series of non-binding, best endeavour commitments.

In 2013 members promised to expedite the operationalisation of the services waiver which would allow members to grant preferential treatment to service suppliers from LDCs, something that had been agreed in principle in 2011 at MC8. By Nairobi, only 21 members had notified the WTO of their intention to make use of the waiver and LDCs expressed concern that they were not "commercially meaningful enough" (WTO 2015d). In the run up to Nairobi, the LDC group sought to encourage more members to make use of the waiver, deepen coverage and expand the scope of existing

notifications. The waiver was set to expire in 2026, 15 years from its adoption on 17 December 2011.

The decision adopted in Nairobi reiterated members' commitment to support the development of services sectors and modes of supply in LDCs and explicitly acknowledged the three-year lag between the adoption of the waiver and the first notification. In response, members extended the waiver until December 2030. Beyond this, members simply agreed to "redouble" efforts to operationalise the waiver, were "encouraged" to extend technical assistance and capacity building to LDC services providers, and committed to the periodic review of the operation of notified preferences (WTO, 2015h). Regulatory issues (such as administrative procedures and recognition of the qualifications of LDC professionals and the accreditation of LDC institutions) were deemed too politically sensitive to be addressed at Nairobi and left out of the final decision. Given the non-binding nature of the decision, realising these aims depends on the good will and initiative of members.

Also included in the LDC list of priorities was simplifying and making more effective the rules of origin used in preference schemes (WTO, 2015d). Though LDCs and other developing countries have a wide range of preference schemes available to encourage exports to the world's major markets, restrictive rules of origin—that is, rules relating to which products can be classified as having been made within the preference receiving country and therefore eligible for lower tariffs—greatly reduce the use of these schemes. At Bali, preference-giving members made only non-binding commitments to adopt more generous rules of origin practices and initiate work to create a more comprehensive and binding future agreement on the issue. This had clearly changed prior to Nairobi. Despite US reluctance in the run-up to MC10, this was one of the first issues on which agreement was reached.

A binding (and therefore legally enforceable) agreement delivered rules of origin as the major achievement for LDCs and, indeed, development, at MC10. Most significantly, one component of the agreement saw preference-granting members agree to grant standard (as opposed to variable) preferential treatment for LDC export products and

reduce administrative burdens on LDCs. The agreement allows 75 per cent of the final value of export products to contain materials not originating from an LDC to qualify for preferential treatment. Members also agreed to reduce the administrative burdens on LDCs and to implement the new commitments in the agreement very quickly, by December 2016 (WTO, 2015i). While some consider this threshold still to be too restrictive, and it remains to be seen whether it enables LDCs to utilise preference schemes fully, there is no doubt that this agreement provides LDCs with much greater flexibility. The decision on rules of origin is also now among the small handful of legally binding, multilateral decisions ever taken by the WTO.

Cotton was another perennial LDC issue on the agenda at MC10. The “Cotton Four” (C4—Benin, Burkina Faso, Chad, and Mali), in particular, have long sought duty free quota free access for cotton exports from LDCs, the elimination of export subsidies, and the reduction of domestic support, especially by developed countries, in the sector. In the run-up to MC10, the C4 again articulated these demands in an effort to move beyond the weak commitment made at Bali to improve linkages between cotton and the aid for trade agenda. Indeed, the C4 proposal provided the basis for talks on the first day of MC10.

The decision adopted in Nairobi goes some distance towards fulfilling these demands. Developed and developing countries (where able to do so) have both committed to eliminating export subsidies in cotton as well as providing DFQF to LDCs as part of their existing preference trade agreements. However, the most trade distorting measures—domestic supports—proved too politically contentious to be addressed. What is more, many critics are of the view that developing countries should not be required to cut their export subsidies at all, in light to the unfair terms of trade they have contended with for many decades. What this means is that, while a binding decision has been taken and the C4 text was used as a basis, only small steps have been taken to redress the egregious asymmetries in global trade in cotton.

Overall, the LDC package is historic and significant in that legally binding commitments were taken to fulfil long standing, best endeavour promises made by

industrialised countries to the world's poorest members. However, when considered in light of yet-unmet commitments on DFQF market access for products other than cotton and the lack of meaningful opportunities for services exports, it fails to bring balance to the broader Nairobi package.

The future of the multilateral trading system

While substantive issues took the lead on the agenda for much of the early discussion, one lurked in the background but which ultimately framed the entire meeting—the future of the Doha round. The most contentious aspects of the debate during MC10 focused on the relationship between parts 1 and 3 of the draft ministerial declaration, relating to the preamble and post-Nairobi programme of work. Debate on the preamble focused on whether or not the ministerial declaration should reaffirm the DDA thereby retaining it as the framework for future WTO negotiations. The USA and the EU, with much less vocal but nonetheless significant support from a large number of other members, arrived in Nairobi clear that the DDA no longer presented a viable means of moving the multilateral trading system forward, arguing that it precluded the membership from discussing new issues. They argued that Doha froze in time what members could discuss, and without a new framework for negotiating gains in new sectors could only be achieved in other (principally plurilateral and mega-regional) fora. Conversely, India and the G33 argued that because there was much that was unfinished from the Doha round it should be retained and used as the framework for negotiating until all other issues had been resolved.

Part way through the meeting the idea emerged that the ministerial declaration should reflect the differing circumstances in which members found themselves and their capacity to move forward with an agenda that was almost a decade and a half old. The result was a decision to recognise these differences and, in the post-Nairobi work programme, to permit members to pursue negotiations in areas of interest to them on the basis of plurilateral negotiations. New issues would require the consent of the membership as a whole if they were to be launched multilaterally.

The consequences of this decision are significant and break with a near 40-year desire to conclude negotiations in the GATT/WTO on a universal basis. Not only does the decision re-introduce a framework for negotiation that permits the conclusion of small group agreements that had been a feature of almost all of the trade rounds prior to Uruguay, it amounts to a recognition that the pursuit of universal agreements like the DDA is too difficult particularly without the kind of institutional bargain that enabled the Uruguay round to be concluded (see Wilkinson, 2015). This, in turn, reduces the capacity of developing countries to secure trade-offs from developed countries in return for concessions in new areas, as the Uruguay round had enabled when agreements in services, intellectual property rights, and investment measures, among other things, had been given in return for the AoA, textiles and clothing, and extended special and differential treatment.

Part of the rationale for launching the DDA on the basis of a single undertaking was to enable developing countries to secure implementation anomalies and agreements in unfinished areas (particularly in agriculture) concluded in exchange for any movement forward elsewhere. Yet, almost from the outset the DDA ran into trouble with members being unable to reach agreement before the round collapsed in 2008 with the Bali ministerial agreement producing the only multilateral agreement of the Doha round. While it is the case that the Nairobi ministerial declaration commits members to the pursuit of development gains by other means, the only compunction to complete Doha is if there is a desire to open up negotiations in new areas on a multilateral basis.

The great irony here is that the new negotiating mode delivered a ministerial outcome that was more inclusive and participatory than ever before. However, what was agreed ensures that this broad-based inclusiveness involving the membership as a whole is likely only to be used again should a return to a universal endeavour arise. This is not to say that future negotiations will not be more inclusive; rather it is to acknowledge that any deals negotiated in the near to medium-term will be done in the context of agreements that include only a subset of members. It is thus the case that greater participation has delivered a more exclusionary negotiating frame, and this was agreed at the first ministerial meeting that was held in an African country.

Conclusion

The future for the WTO and the multilateral trading system is thus mixed. On the one hand, it is clear that the Nairobi outcome will energise the multilateral system and enable the WTO to preside over future agreements. On the other hand, in the absence of a universal endeavour there is very little to force developed countries to focus on negotiations that are of specific interest to their developing counterparts. Furthermore, as the Doha round is now set aside the capacity of the WTO to fulfil the meagre role ascribed to it in the SDGs is impossible to meet. All we can hope for is that members make good on their commitment to pursue development gains by other means. The history of the Doha round and of the multilateral trading system more generally tells us that we should not hold our breath.

Bibliography

- Akram, Munir (2001), "Implementation Concerns—A Developing Country Perspective", *South Bulletin*, volume 6, pp. 1-4.
- Azevêdo, Roberto (2015), "Closing ceremony remarks to MC10", 19 December 2015. Available at: https://www.wto.org/english/news_e/spra_e/spra108_e.htm [accessed 8 March 2016]
- BBC (2015), "Whither the World Trade Organization", 15 December. Available at: <http://www.bbc.com/news/business-35097466> [accessed 8 March 2016]
- Bridges (2015a), "Bridges Daily Update #4 – As Clock Runs Down, WTO Nairobi Talks Kick Into Gear". Available at: <http://www.ictsd.org/bridges-news/bridges/news/bridges-daily-update-4-as-clock-runs-down-wto-nairobi-talks-kick-into-gear> [accessed 8 March 2016]
- Bridges (2015b), "Bridges Daily Update #5 - WTO Members Clinch Agriculture Export Competition Deal, Weigh Next Steps for Negotiating Future". Available at: <http://www.ictsd.org/bridges-news/bridges/news/bridges-daily-update-5-wto-members-clinch-agriculture-export-competition> [accessed 8 March 2016]
- Commonwealth (2015), *The Commonwealth in the Unfolding Global Trade Landscape: Prospects, Priorities, Perspectives; Commonwealth Trade Review 2015*, (London: Commonwealth Secretariat).
- Donnan, Shawn (2015), "US calls time on Doha trade negotiations", *Financial Times*, 13 December. Available at: <http://www.ft.com/intl/cms/s/0/2f9a7ee4-a190-11e5-bc70-7ff6d4fd203a.html#axzz3uS1XTBsu> [accessed 8 March 2016]
- Froman, Michael (2015), "We are at the end of the line on the Doha round of trade talks", *Financial Times*, 13 December. Available at: <http://www.ft.com/intl/cms/s/0/4ccf5356-9eaa-11e5-8ce1-f6219b685d74.html#axzz3uS1XTBsu> [accessed 8 March 2016]
- Jomo, Kwame Sundaram (2015), "End Doha by keeping its original promise", Letter to the Editor, *Financial Times*, 15 December.
- Lembong, Thomas (2015), remarks during the E15 Initiative Session, "Priorities for the WTO in an Evolving Global Trade and Investment Architecture", Trade and Development Symposium, Nairobi, 15 December. Available at: <http://tds.ictsd.org/content/e15-plenary-priorities-wto-evolving-global-trade-and->

[investment-architecture](#) [accessed 8 March 2016]

Malmström, Cecilia and Hogan, Phil (2015), “European Commission Joint statement by Commissioners Malmström and Hogan ahead of the 10th WTO ministerial conference in Nairobi”, Brussels 14 December. Available at: http://europa.eu/rapid/press-release_STATEMENT-15-6302_en.htm [accessed 8 March 2016]

Malmström, Cecilia (2015), “Endgame in Nairobi”, *European Commission Blog Post*. Available at: https://ec.europa.eu/commission/2014-2019/malmstrom/blog/endgame-nairobi_en [accessed 8 March 2016]

Mohamed, Amina (2015). “The WTO’s Nairobi meetings: time to stop the rot”, *Financial Times*, 16 December.

Murphy, Sophia (2015), “The US needs to take a long hard look at the world it has helped create”, Letter to the Editor, *Financial Times*, 17 December.

OHCHR (2015a), “WTO: UN experts urge negotiators to deliver on Doha commitments at the Nairobi conference”, Press Release, 11 December 2015. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16870&LangID=E> [accessed 8 March 2016]

OHCHR (2015b), “Statement by UN Special Rapporteurs in advance of WTO 10th Ministerial Conference in Nairobi”, 11 December 2015 available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16868&LangID=E> [accessed 8 March 2016]

Preeg, Ernest H. (1995), *Traders in a Brave New World*, Chicago and London: University of Chicago Press.

Scott, James and Wilkinson, Rorden (2010), “What happened to Doha in Geneva? Re-engineering the WTO’s image while missing key opportunities”, *European Journal of Development Research*, 22: 2 (April), pp. 141-153.

Wilkinson, Rorden (2006a), *The WTO: Crisis and the Governance of Global Trade*, (London: Routledge).

Wilkinson, Rorden (2006b), “The WTO in Hong Kong: what it really means for the Doha Development Agenda”, *New Political Economy*, 11 (2): 291-303.

Wilkinson, Rorden (2014), *What’s Wrong with the WTO and How to Fix it*, (Cambridge:

Polity).

Wilkinson, Rorden (2015), “Transforming our world by 2030: The multilateral trading system and the new agenda for global action”, *International Trade Working Paper*, 2015/02, (London: Commonwealth Secretariat, 2015), ISSN 2413-3175. Available at: <http://assets.thecommonwealth.org/assetbank-commonwealth/action/viewAsset?id=27697&index=2&total=270&view=viewSearchItem> [accessed 8 March 2016]

Wilkinson, Rorden, Hannah, Erin and Scott, James (2014), “The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters”, *Third World Quarterly*, 35: 6 (September), pp. 1032-1050.

Wolfe, Robert (2009), “The Special Safeguard Fiasco in the WTO: The Perils of Inadequate Analysis and Negotiation”, *World Trade Review* 8 (4): 517–544.

WTO (2014), “Export Subsidies, Export Credits, Export Credit Guarantees or Insurance Programmes, International Food Aid and Agricultural Exporting State Trading Enterprises”, 21 May, G/AG/W/125.

WTO (2015a), “Proposal on Export Competition from Brazil, European Union, Argentina, New Zealand, Paraguay, Peru, Uruguay and the Republic Of Moldova”, 16 November, JOB/AG/48/Corr.1.

WTO (2015b), “Committee on Agriculture in Special Session Report by the Chairman, H.E. Mr. Vangelis Vitalis, to the Trade Negotiations Committee”, 7 December, TN/AG/32.

WTO (2015c), “Draft Texts: Agriculture”, 17 December.

WTO (2015d), “Submission of Bangladesh on Behalf of the LDC Group”, 3 November, JOB/TNC/56.

WTO (2015e), “Draft Decision on Regional Trade Agreements: Communication from Brazil”, WT/MIN(15)/W/41.

WTO (2015f), “Draft Nairobi Ministerial Declaration”, WT/MIN(15)/W/33/Rev.3, agreed 19 December.

WTO (2015g), “WTO members conclude landmark \$1.3 trillion IT trade deal”, WTO News Items, 16 December.

WTO (2015h), “Draft Decision—Implementation of Preferential Treatment in Favour of Services and Service Suppliers of Least Developed Countries and Increasing

LDC Participation in Services Trade”, WT/MIN(15)/W/39, agreed 19 December.

WTO (2015i), “Draft Decision—Preferential Rules of Origin for Least Developed Countries”, WT/MIN(15)/W/38, agreed 19 December.

Notes

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¹ Private conversations between authors and anonymous WTO secretariat officials and members of delegations from South Africa and Bangladesh, 18 December 2015.

² See <http://tds.ictsd.org> for details.

³ Anonymous private conversations with the authors, 17 December 2015. Also, Keith Rockwell, Press Conference, 17 December 2015.

⁴ Monetisation of food aid refers to the selling of donated food into overseas markets. US law requires that a minimum of 15 per cent of nonemergency food aid be monetised to support private voluntary organisations, but in practice approximately 60 per cent is used in this way. There are a number of negative consequences of food monetisation, including the distortion of local markets and undermining of local production, increased price volatility and diversion of food away from those most in need, who cannot afford to purchase food on the open market (Barrett and Lentz, 2009).